BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

VON E. ANNELER	)	
Claimant	)	
VS.	)	
	)	Docket No. 222,218
GOODYEAR TIRE & RUBBER COMPANY	)	
Respondent	)	
AND	)	
	)	
TRAVELERS INSURANCE COMPANY	)	
Insurance Carrier	)	
AND	)	
	)	
KANSAS WORKERS COMPENSATION FUND	)	

ORDER

Claimant appeals from an August 28, 1997, preliminary hearing Order Denying Compensation and an August 28, 1997, Nunc Pro Tunc Order Denying Compensation entered by Administrative Law Judge Floyd V. Palmer. The parties agree that the Order Denying Compensation bears an incorrect docket number and that the correct docket number for this claim is 222,218 as reflected on the Nunc Pro Tunc Order Denying Compensation.

ISSUES

The Administrative Law Judge denied claimant's request for preliminary benefits, finding written claim was not timely made and claimant's alleged accidental injury did not arise out of or in the course of employment. The issues for Appeals Board review are:

(1) Whether written claim was timely made.

(2) Whether claimant sustained personal injury by accident which arose out of and in the course of his employment with respondent.

FINDINGS OF FACT

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

(1) Claimant was employed by respondent on all dates material to this claim.

(2) Claimant was injured at work on July 16, 1992.

(3) Claimant reported the accident to his supervisor, Jerry Strausbaugh, on July 16, 1992, the date of accident.

(4) Medical treatment was not available from respondent without a written request.

(5) Claimant signed his name to a document entitled "Employee Report of Incident."

(6) The Employee Report of Incident describes claimant's accident and injury as follows: "Stepped on Bolt turned Left Ankle & fell twisting Right Knee."

(7) Claimant completed the Employee Report of Incident in order to obtain medical treatment from respondent.

(8) Following his delivery of the Employee Report of Incident to respondent, medical treatment was provided claimant at respondent's dispensary.

(9) Claimant was treated by Myron Leinwetter, D.O. Treatment was initially for left ankle and right knee symptoms. Claimant first reported hip symptoms on August 17, 1992. Dr. Leinwetter attributed claimant's left-hip pain to claimant's limp from favoring his right knee. Claimant was told that his hip would get better when he quit favoring his knee. Claimant was released from further medical treatment by Dr. Leinwetter on August 17, 1992, but was instructed to return should he have

any increased pain or other symptoms associated with this injury.

(10) In June of 1994, claimant went to his personal physician, Dr. Kim, with complaints of hip pain. Dr. Kim obtained x-rays which he suspected showed a fracture in the left hip. Thereafter, on July 12, 1994, claimant returned to Dr. Leinwetter and was referred to an orthopaedic surgeon, Joseph W. Huston, M.D.

(11) Dr. Huston ordered a CT scan of the hip which showed no acute fracture. Claimant reported to Dr. Huston that his hip symptoms began with his work-related accident of July 16, 1992, which claimant described as a fall on his left hip. Dr. Huston opined "no doubt the fall did aggravate a pre-existing problem of arthritis."

(12) Claimant was not suffering from hip pain before the accident and had not received any medical treatment for his hips for 15 years.

(13) Claimant has degenerative arthritis in both hips but his right-hip arthritis is less advanced and is not symptomatic.

CONCLUSIONS OF LAW

The Appeals Board has jurisdiction to review findings regarding disputed issues of whether the employee sustained an accidental injury which arose out of and in the course of the employee's employment and whether claim was timely made. *See* K.S.A. 44-534(a)(2), as amended.

The document entitled "Employee Report of Incident" satisfies the requirement of K.S.A. 44-520a (Ensley) for written claim. As the Kansas Supreme Court held in Ours v. Lackey, 213 Kan. 72, 515 P.2d 1071 (1973), written claim need not take any specific form. However, it must convey an intent on the part of the injured worker to claim compensation under the workers compensation law. At pages 21 and 22 of the transcript of the August 26, 1997, preliminary hearing, claimant testified as follows:

> Q. (By Mr. Bryan) At the time you gave that Exhibit No. 1, that written accident report, to Goodyear, what was your intention with regard to claiming Workers' Compensation benefits?
>
> A. Well, injury, I assumed that that's what it would go under is workmen's comp because I was injured at work. . . .

Q. (By Mr. Carpinelli) Mr. Anneler, you just said you assumed it would be Workers' Compensation?
A. Yes, because I turned in my written thing.

This testimony is uncontroverted. Uncontradicted evidence which is not improbable or unreasonable may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146(1976). Claimant requested treatment for his injury, but respondent was unwilling to provide treatment until an Employee Report of Incident was signed and turned in. Claimant completed the Employee Report of Incident in order to obtain medical treatment for his work-related injury. Accordingly, the Employee Report of Incident satisfies the requirement of K.S.A. 44-520a (Ensley) as it is a writing which was made with the intention of claiming workers compensation benefits.

The issue of whether claimant's current hip condition is the result of the July 16, 1992, accident presents a closer question. Claimant argues that the only difference between his right hip which is asymptomatic and his symptomatic left hip is the fact that his left hip was injured on July 16, 1992. That accident brought about the onset of claimant's hip pain, which claimant alleges has been persistent since that time.

It is well settled in this state that an accidental injury is compensable when the accident served only to aggravate or accelerate an existing disease or to intensify the affliction. Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978); Chinn v. Gay & Taylor, Inc., 219 Kan. 196, 547 P.2d 751 (1976); Harris v. Cessna Aircraft Co., 9 Kan. App. 2d 334, 678 P.2d 178 (1984).

The issue this case presents is one of causation. In order for claimant to receive the preliminary benefits he seeks, claimant must show that the need for his hip replacement surgery was caused in whole or in part by the July 16, 1992, accident. The medical treatment would be compensable even if the accident only accelerated the need for surgery. In other words, even if claimant's degenerative condition would ultimately have resulted in a need for hip replacement surgery, the surgery would nonetheless be compensable under the Workers Compensation Act if the claimant can establish that the surgery would not have been required as soon absent the work-related accident. The burden of proof is on the claimant to establish this by a preponderance of the credible evidence. K.S.A. 44-501(a); Perez v. IBP, Inc., 16 Kan. App. 2d 277, 826 P.2d 520 (1991); *see* K.S.A. 44-508(g).

Claimant did mention left-hip pain to Dr. Leinwetter on August 17, 1992. However, claimant was to return if there was any increased pain or other symptoms. The medical records show that claimant did not return to respondent's dispensary until almost two years later on July 12, 1994. For this reason it is difficult for the Appeals Board to attribute claimant's present symptoms to his July 16, 1992, accident. Despite Dr. Huston's August 2, 1992, office note that the fall did aggravate a preexisting problem of arthritis,

there is no expert medical opinion that the fall resulted in a permanent aggravation or that claimant would not have needed the surgery when he did absent the accident at work. In addition, Dr. Mowery's notes of October 7, 1994, include the following statement:

> I did talk to Dr. Huston who does not feel that this was a work related injury and that the degenerative arthritis was long standing in nature.

The Appeals Board concludes that claimant has not met his burden of proving that his present need for medical treatment and temporary total disability compensation is the result of his work-related accident. Therefore, the Orders by the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order Denying Compensation and Nunc Pro Tunc Order Denying Compensation entered by Administrative Law Judge Floyd V. Palmer dated August 28, 1997, should be, and are hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1997.

BOARD MEMBER

c: John J. Bryan, Topeka, KS
John F. Carpinelli, Topeka, KS
Jeff K. Cooper, Topeka, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director